



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Control Data Corporation

File: B-235737

Date: October 4, 1989

DIGEST

1. Protest that agency allowed insufficient time for preparation of proposals is denied where period allowed exceeded the statutorily mandated minimum time and did not preclude full and open competition.

2. Agency determination to procure by means of a total package rather than by separate procurements for divisible portions of total requirement was reasonable where agency sought to assure interchangeability and compatibility between components of two computer systems and to assure integration of new technologies.

DECISION

Control Data Corporation protests the terms of request for proposals (RFP) No. F29601-89-R-0016, issued by the Department of the Air Force for the advanced spaceborne computer module (ASCM) program to develop advanced on-board computer processing technology. Control Data argues that the solicitation does not allow sufficient time to prepare proposals and is unduly restrictive of competition and that the Air Force has not allowed access to necessary data from previous Air Force contracts. We deny the protest.

The solicitation, which calls for the award of two contracts, was issued to meet the future needs of military space systems and, in particular, Strategic Defense Initiative systems for on-board data processors. Specifically, in the near term (18 to 24 months after award) the contractors are to develop and deliver radiation-hardened control processing modules (CPM) and, by the end of the contract, the contractors are to deliver advanced technology insertion modules (ATIM), a more sophisticated version of the CPM. The RFP also indicates that, in conjunction with the new computer technology, the

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contractors are to develop a new space qualification approach referred to as the qualified manufactures line (QML) for space qualified electronics parts.

On April 4, 1989, the Air Force issued a draft solicitation and on April 13 the agency conducted a presolicitation briefing of interested firms. After making a number of changes in the solicitation in response to contractor comments, the Air Force issued the RFP on May 5 with proposals due on June 5. By letter of May 18, Control Data requested a 90-day extension in the time for submission of proposals. According to Control Data's letter, it had not planned to participate in the procurement because of restrictions in the draft RFP but when those restrictions were not included in the final RFP the firm decided to submit a proposal but needed 90 days to do so. By letter dated May 24, the Air Force denied Control Data's request for an extension because of the urgency of the ASCM program schedule.^{1/} On June 2, Control Data protested to this Office. On June 5, the Air Force received proposals as scheduled and since then has evaluated the proposals. Award has not been made pending our decision on the protest.

Control Data principally complains that since this is a complex research and development procurement and the requirements set out in the draft RFP changed drastically in the final RFP, the 31 days allowed for preparation of proposals was not adequate. With respect to the complexity of the procurement, the protester says that the two contracts to be awarded have an estimated value of \$75 million each, performance will take approximately 4 years and will result in the development of two new high performance computers. Control Data also notes that the source selection authority for this procurement stated in the solicitation cover letter that this is a complex procurement and that he anticipated that award would be made without discussions.^{2/}

Control Data states that it did not start preparing a proposal before the solicitation was issued because the draft RFP included requirements that were unduly

1/ Without arguing that either the draft or final RFP was restrictive of competition, another offeror also requested an extension of the proposal preparation period from June 5 to June 30, 1989. This request also was denied.

2/ The source selection authority's letter said that it was his "intent to award without discussions, subject to law and regulations."

restrictive and, if retained, would have prevented it and other firms from competing. Specifically, the protester refers to the evaluation scheme set out in the draft RFP which required rejection of proposals that did not detail the successful design, fabrication and demonstration of a particular very high speed class processor. Control Data says that because of that requirement only Honeywell and IBM, who performed work under previous government contracts on a related program for a generic space computer (the GVSC), could submit successful proposals and, based on the draft RFP, its only choice was to not start preparing a proposal and protest when the solicitation was issued.

Since, however, the RFP was issued without the restriction, Control Data states that it determined that it could participate in the program but the procurement was too complex for the firm to review the RFP, assemble a technical team and prepare a proposal in the 31 days allowed. Further, Control Data says that when it received the agency's rejection of the firm's request for an extension there were only 5 days left before proposals were due. Control Data also points out that two other prospective offerors have expressed concern about the time allowed for submission of proposals.

While the Air Force does not deny that the subject matter of the RFP is complex, it maintains that program complexity is only one of several factors to be considered in setting the time for proposal preparation and that the urgency of the program dictated the relatively short period allowed. In this respect, the agency states that the schedule for these contracts is time critical because of interface requirements with other ongoing government programs. Further, the Air Force argues that 31 days was adequate time to prepare proposals since the agency used a preinvitation notice, a draft RFP and a presolicitation briefing to alert potential offerors to its requirements.

The Air Force also argues that the changes from the draft RFP were not such as to require more time to prepare proposals. According to the agency, although the RFP did not include the requirement from the draft RFP that offerors already have demonstrated a very high speed processor, the performance requirements in the solicitation did not change.

A contracting agency is required by statute to allow a minimum 30-day response period for all but a limited number of procurements. See 15 U.S.C. § 637(e)(3)(B) (1988). Here, since more than 30 days response time was provided, we have no reason to object to the procurement on this basis

alone. American Contract Servs. Inc., B-231903, Nov. 2, 1988, 88-2 CPD ¶ 432.

Control Data, nonetheless, argues that the Air Force was required to extend the closing date for receipt of proposals in order to obtain full and open competition as mandated by the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(a)(1) (1988), because it was unable to prepare proposals in the time allowed. Since the agency's refusal to extend the closing date was not per se improper, we review the agency's action in this regard to determine whether full and open competition was obtained and whether there was a deliberate attempt to exclude the potential offeror. See Owl Resources Co., B-221296, Mar. 21, 1986, 86-1 CPD ¶ 282.

First, we note that the Air Force has received a number of offers in response to the solicitation and that no other firm has protested the proposal preparation time to our Office. Further, we think that the protester's lack of time to submit a proposal was not due solely to the relatively short response time in the RFP but also to a business decision made by the protester that it would not submit a proposal. At the time Control Data decided that, however, only the draft RFP had been issued and there was no reason evident from the record before us for Control Data to have concluded that the final RFP would not change. In our view, this decision by Control Data was the primary reason the firm was not in a position to prepare and submit a proposal when the RFP was issued without the allegedly restrictive terms.^{3/} Under the circumstances, including the urgency of the program schedule due to the need to interface with other programs, we do not think that the proposal response time allowed by the Air Force resulted in a failure to meet the CICA requirement for full and open competition.

^{3/} The record indicates that another firm which had decided not to participate based on the draft RFP reversed that decision when the RFP was issued and was able to prepare and submit a timely proposal. Thus, it is not clear that Control Data would not have been able to prepare a proposal in the 31 days allowed. With respect to Control Data's contention that only 5 days remained for the firm to prepare a proposal after the agency indicated that it would not extend the proposal preparation period, we note that Control Data did not ask for that extension until 2 weeks after the solicitation was issued and although the Air Force refused to extend the proposal due date to 90 days, the agency offered to allow an additional 2 weeks to prepare proposals.

Moreover, there is nothing in the record which indicates that the Air Force's refusal to extend the closing date was a deliberate attempt to exclude Control Data from the competition and Control Data does not allege otherwise.

Control Data's second basis of protest is that the solicitation is unduly restrictive of competition because it combines the requirement to develop a 1750A computer (the CPM) and a 32-bit computer (the ATIM) with the requirement to establish new qualified manufacturing line practices. According to Control Data, as a result of combining these requirements, the Air Force has significantly reduced the number of potential offerors. In this regard, the protester states that because of their prior experience, only IBM and Honeywell will be able to successfully compete for the CPM.

The Air Force states that Control Data misunderstands the solicitation in that there is no requirement that the ATIM incorporate 32-bit architecture. According to the agency, the RFP requires that the ATIM meet certain performance characteristics and simply allows the use of 32-bit architecture.

More generally, the Air Force argues that combining the requirements is justified since development of the CPM and the ATIM is integrally linked through the program's emphasis on the new space qualification approach, and through the program's need for CPM and ATIM subassembly interchangeability and standardization. Further, according to the Air Force, subdividing the program into smaller procurements as suggested by Control Data would require increased government expense, effort and time to integrate the technologies developed under the separate contracts and would not allow the agency to meet the user activities' schedules.

We have recognized that procurements by an agency on a total package basis can restrict competition. The Caption Center, B-220659, Feb. 19, 1986, 86-1 CPD ¶ 174. However, we have upheld an agency's procurement on the basis of a total package approach where the agency has reasonably concluded that such an approach was necessary to meet its minimum needs. Target Financial Corp., B-228131, Nov. 23, 1987, 87-2 CPD ¶ 506. Here, we conclude that the Air Force's efforts to assure interchangeability and compatibility between components of the CPM and ATIM computers and the need to integrate the new technologies seem to be valid reasons for procuring on a total package basis. The protester has done nothing other than to state that it disagrees with the agency's position and that the total package approach puts it at a competitive disadvantage. Under the circumstances, we have no reason to object to

the agency's position. See MASSTOR Sys. Corp., B-211240, Dec. 27, 1983, 84-1 CPD ¶ 23. As far as Control Data's argument that only Honeywell and IBM can meet the CPM phase of the procurement, the record shows that firms other than those two have submitted proposals.

Finally, Control Data asserts that the procurement is restrictive since prospective offerors have not been allowed access to GVSC chip set designs developed at government expense by Honeywell and IBM on previous contracts. In response, the Air Force asserts that it created a "read file" containing all available, relevant data concerning GVSC development efforts undertaken on earlier contracts. The Air Force listed in its report the data which it says was placed in the read file from the GVSC program so that firms other than Honeywell and IBM could compete on this acquisition. According to the agency, Control Data never made use of this information.

In its comments responding to the Air Force's report, Control Data simply says that there was no purpose in its using the read file since the agency had refused at the presolicitation briefing to provide government-owned data on the GVSC chip sets. Control Data does not deny that the government generally directed prospective offerors to the read file for information on previous contracts and the firm also does not deny that the information listed in the read file on the GVSC program was adequate for firms other than Honeywell and IBM to prepare competitive proposals. Moreover, another firm, which submitted a proposal, other than Honeywell or IBM, indicated to us that the government provide it with enough preliminary information on the GVSC chip sets to propose a competitive solution in this area. Under the circumstances, we conclude that the record does not support the protester's assertion that the agency failed to allow access to the necessary data.

The protest is denied.


James F. Hinchman
General Counsel